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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[16 March 1998]

GE.98-11018 (E)

1. The International Indian Treaty Council (IITC) has for many years raised the issue of indigenous peoples and their right to self-determination before the Commission on Human Rights, many times addressing this issue in the context of article 1 common to the instruments of the International Bill of Human Rights, on the right to self-determination. We have informed the Commission of situations where there is lack of recognition and observance of this right of all peoples, due to the continuation of colonialism in so-called "successor" or "independent" States.

2. Nowhere is the struggle for the observance of this right so current as the United States of America. There, in spite of Presidential directives to Federal agencies directing them to deal with indigenous peoples on nation-to-nation basis, in spite of legislation establishing the sovereignty of indigenous peoples, the United States is embarked upon a policy of the diminution of indigenous rights, and an attack on indigenous lands.

3. State Governments within the United States federal systems are seeking to curtail hunting and fishing rights, and other aboriginal rights, seeking to tax Indian tribes, and taking other measures that directly contravene the proscription contained in article 1 common to the instruments of the Universal Bill of Human Rights, that peoples cannot be denied their own means of subsistence. States within the United States federal system, with the active complicity of the United States Supreme Court, are severely affecting the right of peoples to establish their own visions of development.

4. Indeed, although the Supreme Court of the United States ruled in the "GO-Road" decision, that the Federal Government can do what it wants on "its" land, to the point of irreparable damage of sacred areas and impairment of the practice of religion by indigenous peoples, it recently ruled, with regard to the native village of Venetie, located in the State of Alaska, that indigenous peoples within the United States cannot do what they want on their land.

5. On 25 February 1998, the United States Supreme Court issued a unanimous opinion holding that the Venetie Tribe's 1.9 million acres of ancestral land are no longer under the governmental jurisdiction of the tribe. This decision represents a breach of honour since the Venetie Tribe had been promised that it would always be able to keep and govern their lands.

6. The litigation centred on the proper interpretation of the Alaska Native Claims Settlement Act of 1971, the largest tribal land claims settlement in American history. Under that Act, Congress extinguished Alaska tribal claims to 340 million acres in return for a cash payment of 962.5 million dollars and secure title to 44 million acres selected under a complex formula.

7. But in an unprecedented move in federal tribal relations, the United States Congress directed that the 44 million acres be conveyed not to the tribes, but to new native corporations which the tribes were required to establish under State law. Although the tribes did not consent to the transfer of their lands to State-chartered corporations, some 200 village tribes in the State of Alaska were required to take part in the land claims settlement.

8. The particular conflict that gave rise to litigation involved the application of the 1971 Settlement Act to the Venetie Tribe of Neetsaii' Gwich' in Indian, a remote Athabascan Tribe that inhabits a vast area north of the Arctic Circle and hundreds of miles away from Alaska's major population centres. Accessible only by air, boat, snowmobile or dog sled, tribal members largely live a traditional life based on hunting, fishing and trapping, and the tribal council administers all essential governmental services other than the federally supported local school.

9. In 1943, the Secretary of Interior set aside a 1.9 million acre reservation in order to protect the Tribe from outsiders encroaching on tribal hunting and trapping grounds. In the late 1960s, the Venetie Tribe opposed the evolving land claims settlement legislation.

10. The Tribe wrote to Congress to retain its reservation, even if doing so meant giving up the cash settlement. Congress obliged and the Tribe received no share of the monetary settlement. Still, Congress required that the land initially be conveyed to two State-chartered corporations established by the Tribe for its tribal citizens. Once the lands were conveyed, the corporations immediately reconvened the lands back to the Venetie Tribe, which continues to own the land today.

11. In ruling against the Tribe's continued right to tax, the Court reasoned that when a reservation does not exist, Indian tribes can only continue to govern their lands if those lands qualify as a "dependent Indian community" under a 1948 federal law known as the "Indian country" statute.

12. Relying heavily on two Supreme Court cases decided at early in the century, the Court interpreted that term narrowly to require that the Federal Government must have "set apart" the lands "for the use of Indians as such", and that the Government must retain "superintendence" and "control" over how the land is used and developed. The Court then rules that Venetie's lands could not satisfy this standard because Congress initially conveyed the lands to the corporations for whatever use they might choose (and not just "for the use of Indians as such"), and because Congress had deliberately chosen to forego any control over how those choices would be made.

The Court's ruling makes clear Congress' hidden agenda in the Settlement Act to terminate tribal powers and sever the tribes from their land base.

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1. The International Indian Treaty Council (IITC) addresses item 20, the rights of the child, guided by the belief that our decisions and actions will affect the children for the next seven generations. The rights and well-being of indigenous children in particular depend upon the cultural integrity of our peoples and the ability of the family to carry out its responsibilities within our communities.

2. The IITC commends Mrs. Graça Machel for her valiant report of 1996 and her statements on children and armed conflict. Furthermore, we support the recommendation to establish a special representative of the Secretary-General on children and armed conflict.

3. Since 1995, children have been caught in over 30 major armed conflicts throughout the world. In the last decade alone, over 2 million children have been killed, nearly 5 million disabled, 12 million left homeless, more than 1 million orphaned or separated from their parents and some 10 million psychologically traumatized. In Chiapas, Mexico, a large percentage of those wounded or killed at the hands of paramilitary groups or state police were children. Hundred of children have been forced to flee conditions of terror to equally harsh conditions of malnutrition, limited shelter and lack of medicines for illnesses that, when left untreated, are fatal.

4. Cecilia Jiménez, a two-month-old infant, died recently of pneumonia in the presence of a commission of observers in Chiapas composed of various international NGO representatives. The Commission found that, in one community swollen with 8,000 refugees from 32 communities displaced by recent paramilitary attacks in the region, approximately 60 per cent of the displaced were children.

5. Children are defenceless victims of warfare, yet their suffering seems not to matter to State policy makers. For example, 58 per cent of the victims of anti-personnel landmines are civilians, many of whom are children. For those who survive, the psychological trauma associated with the loss of limbs is considerable. The only purpose of these inherently indiscriminate weapons is to kill or maim.

6. In 1994, 2-5 million landmines were laid and only 100,000 were cleared. Millions of landmines are in stockpiles: Somalia has imported them from 27 countries and in Angola there are approximately 9 million of them lying in the ground. More than 110 million active landmines are spread out across sacred Mother Earth, sometimes detonating 20 years after the conflict ends!

7. Indiscriminate attacks and the use of indiscriminate weapons are specifically prohibited by the Geneva Conventions and their Additional Protocols. These practices, and particularly the use of anti-personnel landmines, have been recognized as violations of fundamental human rights, particularly the right to life, by all major international bodes, including all regional organizations of States. The international community has been united in the condemnation of their use, and has noted in particular the tragic effects of these devices on children. The prohibition against the use of weapons which cause unnecessary suffering applies to all States, independent of their treaty obligations. The trade in landmines must be prohibited and their production should be banned. The IITC calls on all

Governments to sign the 1980 Convention on Conventional Weapons, including Protocol II which deals, in part, with landmines.

8. In 1995 the United States of America signed the Convention on the Rights of the Child and has expressed support for the Convention before this august body, but has not yet sought to ratify it. Ironically, the United States Government is simultaneously trying to dismantle Public Law 95-608 of 1978, referred to as the Indian Child Welfare Act (ICWA), which was designed so that Indian tribes, the United States and the Federal Government could work cooperatively to achieve the following: to maintain the integrity of Indian families by providing supportive services; to closely examine the standards applied for removal of children due to abuse, neglect or parental unfitness; to recognize the jurisdiction of tribal courts in certain cases; and to make every effort to place Indian children in Indian foster homes when out-of-home placement is necessary as a last resort.

9. The United States Congress passed the law in response to overwhelming evidence from Indian communities that the loss of their children meant the destruction of their cultures. Significantly, ICWA was developed after the discovery that the Bureau of Indian Affairs (BIA) was contracting agencies to implement an interstate adoption clearing house for Indian children, a veritable "adopt an Indian" programme. In its first year the BIA's programme placed 395 Indian children from western states into non-Indian homes in eastern metropolitan areas. In 1976 a nationwide study found that up to 1,400 Indian children per year were being adopted by non-Indian homes.

10. There is no resource more vital to the continued existence and integrity of Indian peoples than our children. The United States of America fails to recognize our need to maintain the cultural and social standards that are the fabric of Indian communities and families. Current congressional and presidential initiatives represent an assault on Indian Nations. They are also contrary to the Convention on the Rights of the Child and are tantamount to the "final" solution of ethnocide.

11. The ICWA will again face intense scrutiny in Congress, which threatens to seriously erode ICWA protections, resulting in the destruction of tribal families. Since 1995 we have sought to educate members of Congress about ICWA and its importance to our children and our families. But we continue to be alarmed by many legislators' outdated, assimilationist positions, as exemplified during a Subcommittee on Indian Affairs hearing in June 1997, in which a congresswoman asked why it was such a priority for Indian communities to protect the cultural heritage of their children when the option of material goods was available. As we face the millennium, we will continue to educate the United States Congress so that it can finally abandon policies equivalent to those of the nineteenth century which were explicitly designed to remove Indian children from their families in an effort to "save the man by killing the Indian".

12. Congressional sources also indicate that, during the present session of Congress, major changes to federal foster care and adoption policy will be proposed in order to remove barriers to adoptions. A similar presidential initiative, the Multi-Ethnic Placement Act, would eliminate all cultural and social standards for adoption, meaning that Indian children could be adopted

by non-Indians and therefore be forced to learn life values different from their own.

13. Many advocates for Indian children are concerned that, while efforts to increase the availability of permanent homes for children are important, opponents of ICWA might use such efforts to undo protections for Indian children. A number of social workers contend that a movement toward permanent adoptions over standard foster care policy, as endorsed by President Clinton last year, will too quickly deny children the chance to be reunited with their biological parents.

14. Many dismal statistics indicate that indigenous children suffer the cumulative effects of colonization when deprived of their cultural environment. The effects include: low achievement, poor health, moral and spiritual deterioration, and a staggering suicide rate. We, the indigenous peoples, will continue to challenge legislative initiatives that would separate our children from their family groups and thereby thwart our families' traditional path. Our children have a right to follow us home, back to the sacred hoop of life. Our children have a right to a future, a nationality, a language, culture, religion and a safe environment free from trauma and displacement. The IITC urges the United States of America to immediately ratify the Convention on the Rights of the Child in the interest of all children, and for the coming generations.

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1. There are dicta in United States Supreme Court decisions, to the effect that prisoners have no rights. Yet, as the following statement by the National Native American Prisoners Rights Advocacy Coalition points out, "[United States] prisons, since their founding, have provided inmates with access to religion as an important part of rehabilitation." This situation with regard to indigenous prisoners in the United States is another matter.

2. Whether it be by outright denial of religious services, as in the State of Texas, or by more subtle means, as in the State of California, where Native American inmates are forced to cut their hair in accordance with prison rules, the fundamental human right of religious thought and practice of indigenous inmates in the United States is severely being affected.

3. There are no similar limitations on the practice of religion nor impediments to the access of priests, rabbis or ministers of other religions for inmates of other faiths. There is only denial of access and a growing intolerance toward indigenous spiritual leaders and healers. The racial and cultural prejudice against indigenous peoples in the United States, against their cultures, traditions and world views, is a matter of United States Supreme Court and federal and state prison policy.

4. The International Indian Treaty Council is honoured to present as its written intervention on the human rights of all persons subjected to any form of detention or imprisonment, the following statement written by the National Native American Prisoners Rights Advocacy Coalition, an indigenous non-governmental organization seeking the observance and protection of the religious rights of Native American inmates. The IITC joins in their call that the Special Rapporteur on religious intolerance examine the plight of Native American inmates in the United States, and issue appropriate recommendations to United States authorities.

ANNEX

Protection of the religious rights of Native American prison inmates

The National Native American Prisoners Rights Advocacy Coalition was formed in June 1995 in Boulder, Colorado. The NNAPRAC is a coalition of Indian Nations, organizations and concerned activists who are working within the United States prison systems. It includes the Native American Rights Fund, the National Congress of American Indians, the International Indian Treaty Council, the Navajo Nation, the Oglala and Rosebud Sioux Tribes, and the Native American Church of North America. The Co-Chairmen of this coalition are President Albert Hale of the Navajo Nation and President Ron Allen of the National Congress of American Indians. The primary purpose of the coalition is to seek increased protection for the free exercise of religion and culture for Native American prisoners in the corrections setting. It carries out activities at the national level in the fields of criminal justice, rehabilitation and human rights that are of paramount importance to Indian Nations. The human rights concern has been the lack of strong legal protection of Native religious practices in prisons. The ability to practise traditional native religions is paramount to the cultural survival of Native peoples.

For many years the paramount human rights problem of Native Americans who are incarcerated has been the denial of their rights to practise traditional Native American religions in federal and state prisons. This long-standing criminal justice problem, which implicates federally protected rights, was documented in congressional hearings as early as 1978 during the passage of the American Indian Religious Freedom Act. It was also documented in the oversight hearings on the problems in the free exercise of religion experienced by Native Americans held by the Senate Committee on Indian Affairs and by the House Subcommittee on Native American Affairs (1992-1993).

At present, Native Americans are seeking increased federal protection for the free exercise of religion because it is an essential component of the rehabilitation of Native offenders and of the cultural and spiritual well-being of the reservation communities to which offenders released or paroled from prison return.

American prisons, mandated by the principle of free exercise of religion, have since their founding provided inmates with access to religion as an important part of rehabilitation. Native American prisoners, whose numbers are highly disproportionate to the composition of Native Americans in the general population, have often been denied equal access.

Native spiritual practices are very important for the spiritual healing of the Native prisoners and it has proven to have been very successful for the rehabilitation of the mind, body and spirit. A recovery movement has been developing across the country for the past 25 years and a spiritual healing has evolved, especially in the prison systems. Until 1978 countless ceremonial practices were banned and religious structures and articles were destroyed in an effort to assimilate Native peoples into the dominant society. In 1978 Congress passed the American Indian Religious Freedom Act (AIRFA), intended to protect the right of American Indians to practise their traditional religions. AIRFA states that the policy of the United States Government is "... to protect and preserve for American Indians their inherent

right of freedom to believe, express and exercise the traditional religions ...." However, the United States Supreme Court, in its 1988 Lyng v. Northwest Indian Cemetery Protective Association decision, declared AIRFA was only a policy statement and refused to protect Native religious practices.

Imprisoned Native Americans have no legal protection under AIRFA to consistently practise their traditional religions. Sweatlodges, long hair worn in a traditional fashion, headbands, medicine bags, possession of sage, cedar and tobacco and other practices have been banned as "security risks" by one prison or another.

Passage of the 1993 Religious Freedom Restoration Act (RFRA), supported by a broad coalition of religious groups, provided some protections for Native religious practices in prisons. RFRA restored the "compelling interest test", requiring that Government not restrict religious practice unless there was a compelling interest to do so, which had been eliminated by the earlier Supreme Court decision Employment Division Oregon v. Smith (1990).

The Supreme Court struck down the Religious Freedom Restoration Act as unconstitutional on 25 June 1997 (City of Boerne, Texas, v. Flores). This decision adversely affects the religious and spiritual practices of all Native American prisoners in the United States prison system.

The outright denial of religious practices is tantamount to a denial of an opportunity for a recovery and a spiritual healing. Enforcement of and compliance with the law have not been uniform and lawsuits filed to enforce existing laws have resulted in contradictory decisions. Freedom of religion for Native prisoners has depended upon the whim of individual prison officials. Ignorance and lack of awareness should not be an excuse for systematically and arbitrarily denying religious rights, then justifying those denials on the basis of security concerns. Hypothetical situations should not be conjured up and presented as fact. These racist attitudes or judgements should not be the basis for arbitrarily and/or capriciously denying basic human rights.

There are lawsuits pending and complaints filed against the State Department of Corrections in Texas, California, New York, Indiana, Wisconsin, Minnesota, Nevada, Missouri, Washington, Oregon, Pennsylvania and Arizona.

Traditional religious practices help imprisoned Native Americans. The traditional religious practices and ceremonies such as the cleansing and purification ceremonies (sweatlodges) have proven to be very successful in the positive changes in attitude, behaviour and personality. The sweatlodges teach respect, responsibility and sobriety. The pipe ceremonies and talking circles and individual spiritual counselling have also proven very effective in spiritual healing, renewed dignity and cultural pride.

The coalition would request the United Nations Special Rapporteur on religious intolerance to examine and explore the violations of the religious and cultural rights and practices of the original peoples of the United States of America and to present his findings to the Commission so that religious intolerance may be eliminated.